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b. An equity incentive payment which will encourage equity rather than debt financing of major projects. (effective 7/1/93)

c. A capital asset repair or replacement payment for purchases up to \$150 per licensed bed per year with a carryover of any excess. (effective 7/1/93)

d. A refinancing incentive for a refinancing that saves on annual interest expense payments (effective 7/1/93).

3. The sale of a nursing facility after June 30, 1992, may result in an increase in the nursing facility's property rate. The amount of that increase will be measured by the modified rental recalculation. An increase in interest expense is allowed within certain limitations. The amount of the "step-up" in the nursing facility's capital asset basis, if any, does not result in an a property rate increase since depreciation is not a component of property rate computation.

4. After September 1, 1992, nursing facility appraisals will no longer be needed except to resolve appraisal appeals. The nursing facility's appraised value will be indexed for inflation annually. Also, capital asset additions or deletions will be deducted from the indexed appraised values.

F. Contractual Rate-setting Alternative Method After August 1, 1995

1. A nursing facility may apply to be paid a contractual alternative payment rate instead of the cost-based payment rate established under Sections 1.000 to 21.000. Proposal requirements, selection criteria, limits, exemptions, and consumer protections are described in Section 22.000.

2. A nursing facility electing to receive an alternative payment rate must enter into a contract with the Department. All contracts entered into are for a term of one year.

3. Different contract terms may be negotiated for different facilities.

4. A nursing facility's case mix payment rates for the first rate year of a facility's contract is the payment rate the facility would have received under Sections 1.000 to 21.000.

5. Until July 1, 1999, a nursing facility's case mix payment rates for the second and subsequent years of a facility's contract are the previous rate year's contract payment rates plus an inflation adjustment.

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6. A Medicare certified nursing facility electing to receive an alternative payment rate filing a Medicare cost report must comply with Section 22.080, item A. A nursing facility that is not Medicare certified does not have to file a Medicare cost report, but must file a cost report as described in Section 2.000.

7. Certain other exemptions, such as an exemption from auditing requirements under applicable state laws, are outlined in Section 22.000.

8. Participation in the contractual alternative payment rate setting method is voluntary. Participating facilities must continue to comply with all state and federal requirements relating to quality assurances, vulnerable adults protections, residents' rights, and OBRA requirements.

G. July 1, 1998 Changes. Section 11.048 contains changes for this rate year. The changes:

1. provide rate exceptions for certain nursing facilities by increasing the allowable care-related per diem and the operating cost per diem;

2. increases the spend-up limits and provides a one-year rate adjustment for a specific nursing facility that completed an approved replacement and remodeling project;

3. increases the care-related spend-up limit for a specific nursing facility that is exempt under current law from certain rate limits and has at least 75 percent of its beds licensed to provide residential services for persons with physical handicaps;

4. exempts a specific nursing facility from spend-up limits;

5. for all nursing facilities, eliminates the care-related, other operating cost, general and administrative, and plant and maintenance limits. These limits will be calculated only for purposes of determining efficiency incentives;

6. set a floor on nursing home per diem payments no lower than the rate in effect on June 30, 1998, subject to rate adjustments and audits;

7. combine the care-related per diem and the other operating per diem for purposes of establishing spend-up limits; and

8. require the Department to calculate the spend-up and high-cost limits by indexing each geographic group's median value by the CPI plus one percentage point.

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SECTION 1.030 Definitions.

Actual allowable historical operating cost. "Actual allowable historical operating cost" means the operating costs incurred by the nursing home and allowed by the Commissioner for the most recent reporting year.

Addition. "Addition" means an extension, enlargement, or expansion of the nursing home for the purpose of increasing the number of licensed beds or improving resident care.

Applicable credit. "Applicable credit" means a receipt or expense reduction as a result of a purchase discount, rebate, refund, allowance, public grant, beauty shop income, guest meals income, adjustment for overcharges, insurance claims settlement, recovered bad debts, or any other adjustment or income reducing the costs claimed by a nursing home.

Appraised value. "Appraised value" means the value of the nursing home buildings, attached fixtures, and land improvements used directly for resident care as determined under Section 17.000.

Assessment form. "Assessment form" means the form developed by the Department of Health as adopted and used for performing resident assessments.

Attached fixtures. "Attached fixtures" means equipment used directly for resident care affixed to the building and not easily movable as specified in the fixed equipment table of the depreciation guidelines.

Buildings. "Buildings" means the physical plant used directly for resident care and licensed and auxiliary buildings in the nature of sheds, garages, and storage buildings located on the site if used directly for resident care. This definition does not include buildings or portions of buildings used by central, affiliated, or corporate offices.

Building capital allowance. "Building capital allowance" means the component of the property-related payment rate which is denominated as a payment for the use of building, attached fixtures, and land improvements.

Capital assets. "Capital assets" means a nursing home's buildings, attached fixtures, land improvements, depreciable equipment, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.

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Case mix operating costs. "Case mix operating costs" means the operating costs listed in Section 6.050 and the portion of fringe benefits and payroll taxes allocated to the nursing services cost category under Section 8.000.

Commenced construction. "Commenced construction" means the date on which a newly-constructed nursing home, or nursing home with an increase in licensed beds of 50 percent or more, meets all the following conditions:

- A. The final working drawings and specifications were approved by the Commissioner of health.
- B. The construction contracts were let.
- C. A timely construction schedule was developed, stipulating dates for beginning, achieving various stages, and completing construction.
- D. All zoning and building permits have been issued.
- E. Financing for the project was secured as evidenced by the issuance of a binding letter of commitment by the financial institution, sale of bonds, or other similarly binding agreements.

Commissioner. "Commissioner" means the Commissioner of the Minnesota Department of Human Services.

Consulting agreement. means any agreement the purpose of which is for a central, affiliated, or corporate office to advise, counsel recommend, or suggest to the owner or operator of the nonrelated long-term care facility measures and methods for improving the operation of the facility.

Cost category. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, audit, cost control, and the determination of cost limitations.

Cost report. "Cost report" means the document and supporting material specified by the Commissioner and prepared by the nursing home. The cost report includes the statistical, financial, and other relevant information for rate determination.

Deletion. "Deletion" means the sale, destruction, or dismantling of a nursing home capital asset or a portion of a nursing home capital asset without subsequent replacement.

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Department. "Department" means the Minnesota Department of Human Services.

Depreciated replacement cost method. "Depreciated replacement cost method" means the method of property appraisal which determines the value of a capital asset by establishing the replacement cost new reduced by depreciation.

A. "Replacement cost new" means the amount required to obtain a new asset of equivalent utility to that which exists, but built at current prices, with modern materials and according to current standards, designs, and layout.

B. "Depreciation" means a loss of utility and hence value caused by deterioration or physical depreciation such as wear and tear, decay, dry rot, cracks, encrustations, or structural defects; and functional obsolescence such as poor plan, mechanical inadequacy or overadequacy, and functional inadequacy or overadequacy due to size, style, or age.

Depreciable equipment. "Depreciable equipment" means the standard movable care equipment and support service equipment generally used in nursing homes. Depreciable equipment includes that equipment specified in the major movable equipment table of the depreciation guidelines.

Depreciation guidelines. "Depreciation guidelines" means "The Estimated Useful Lives of Depreciable Hospital Assets," issued by the American Hospital Association, 840 North Lake Shore Drive, Chicago, Illinois (Chicago: 1983). Except as provided in Section 3.040, the useful lives in the depreciation guidelines must not be used in the determination of the total payment rate. The depreciation guidelines are incorporated by reference and are available for reference at the Minnesota State Law Library, Minnesota Judicial Center, 25 Constitution Avenue, Saint Paul, Minnesota, 55155.

Desk audit. "Desk audit" means the establishment of the payment rate based on the Commissioner's review and analysis of required reports, supporting documentation, and work sheets submitted by the nursing home.

Direct cost. "Direct cost" means a cost that can be identified within a specific cost category without the use of allocation methods.

Discharge. "Discharge" means a termination of placement in the nursing home that is documented in the discharge summary signed by the physician. For the purposes of this definition, discharge does not include:

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A. a transfer within the nursing home unless the transfer is to a different licensure level; or

B. a leave of absence from the nursing home for treatment, therapeutic, or personal purposes when the resident is expected to return to the same nursing home.

Equipment allowance. "Equipment allowance" means the component of the property-related payment rate which is denominated as a payment for the use of depreciable equipment.

Field audit. "Field audit" means the on-site examination, verification, and review of the financial records, statistical records, and related supporting documentation of the nursing home and any related organization.

Fringe benefits. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, and an allowance for uniforms.

General and administrative costs. "General and administrative costs" means the costs of administering the nursing home as specified in Section 6.000.

Historical operating costs. "Historical operating costs" means the allowable operating costs incurred by the nursing home during the reporting year immediately preceding the rate year for which the payment rate becomes effective, after the Commissioner has reviewed those costs and determined them to be allowable costs under the medical assistance program, and after the Commissioner has applied the limit on general and administrative costs.

Hospital-attached nursing home. "Hospital-attached nursing home" means a nursing home which is: 1) under common ownership and operation with a licensed hospital and shares with the hospital the cost of common service areas such as nursing, dietary, housekeeping, laundry, plant operations, or administrative services; 2) is recognized by the Medicare Program as a hospital-based nursing facility; and 3) is required to use the stepdown method of allocation by the Medicare program, title XVIII of the Social Security Act, provided that the stepdown results in part of the cost of the shared areas to be allocated between the hospital and the nursing home, and that the stepdown numbers are the numbers used for Medicare reimbursement, except that direct identification of costs to the nursing facility cost center will be permitted only when the comparable hospital costs have also been directly identified to a cost center which is not allocated to the nursing facility.

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Indirect cost. "Indirect cost" means a cost that is incurred for a common or joint purpose and is identified with more than one cost category but is not readily identified with a specific cost category.

Land improvement. "Land improvement" means an improvement to the land surrounding the nursing home directly used for resident care as specified in the land improvements table of the depreciation guidelines, if replacement of the land improvement is the responsibility of the nursing home.

Management agreement. Is an agreement in which one or more of the following criteria exist:

A. The central affiliated, or corporate office has or is authorized to assume day-to-day operation control of the long-term care facility for any six-month period within a 24-month period. "Day-to-day operational control" means that the central affiliated, or corporate office has the authority to require, mandate, direct, or compel the employees of the facility to perform or refrain from performing certain acts, or to supplant or take the place to the top management of the facility. "Day-to-day operational control" includes the authority to hire or terminate employees or to provide an employee of the central, affiliated, or corporate office to serve as administrator of the facility;

B. The central, affiliated, or corporate office performs or is authorized to perform two or more of the following: the execution of contracts; authorization of purchase orders; signature authority for checks, notes, or other financial instruments; requiring the facility to use the group or volume purchasing services of the central, affiliated, or corporate office; or the authority to make annual capital expenditures for the facility exceeding \$50,000, or \$500 per licensed bed, whichever is less, without first securing the approval of the facility board of directors;

C. The central, affiliated, or corporate office becomes or is required to become the licensee under applicable state law;

D. The agreement provides that the compensation for services provided under the agreement is directly related to any profits made by the facility;

E. The long-term care facility entering into the agreement is governed by a governing body that meets fewer than four times a year, that does not publish notice of its meetings, or that does not keep formal records of its proceedings.

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Medical plan of care. "Medical plan of care" means documentation signed by the resident's physician which includes the resident's primary diagnoses, secondary diagnoses, orders for treatment and medications, rehabilitation potential, rehabilitation procedures if ordered, clinical monitoring procedures, and discharge potential.

Necessary service. "Necessary service" means a function pertinent to the nursing home's operation which if not performed by the assigned individual would have required the nursing home to employ or assign another individual to perform it.

Nursing facility. "Nursing facility" means a facility licensed by the Department of Health as a Medical Assistance nursing home or a boarding care facility which meets federal certification requirements for a nursing facility.

Operating costs. "Operating costs" means the costs of operating the nursing home in compliance with licensure and certification standards. Operating cost categories are:

- A. nursing, including nurses and nursing assistants training;
- B. dietary;
- C. laundry and linen;
- D. housekeeping;
- E. plant operation and maintenance;
- F. other care-related services;
- G. general and administrative;
- H. payroll taxes, fringe benefits, and clerical training;
- I. workers' compensation self-insurance;
- J. group health, dental, or life insurance; and
- K. real estate taxes and actual special assessments paid.

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Other care-related operating costs. "Other care-related operating costs" means the operating costs listed in Section 6.060, and the portion of fringe benefits and payroll taxes allocated to the other care-related cost category, the cost of food, and the dietician consulting fees calculated under Section 8.000.

Other operating costs. "Other operating costs" means the operating costs listed in Sections 6.010-6.040 and 6.070, excluding the cost of food and dietician consulting fees, and the portion of fringe benefits and payroll taxes allocated to each of these operating costs categories under Section 8.000.

Payroll taxes. "Payroll taxes" means the employer's share of social security withholding taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes or costs.

Preopening costs. "Preopening costs" means the operating costs incurred prior to the admission of a resident to a newly-constructed nursing home.

Private paying resident. "Private paying resident" means a nursing home resident who is not a medical assistance program recipient for the date of service and whose payment rate is not established by another third party, including the Veterans Administration or Medicare.

Productive nursing hours. "Productive nursing hours" means all on-duty hours of nurses, aides, orderlies, and attendants. The on-duty hours of the director of nursing for facilities with more than 60 licensed beds and the on-duty hours of any medical records personnel are not included. Vacation, holidays, sick leave, classroom training, and lunches are not included in productive nursing hours.

Rate year. "Rate year" means the state of Minnesota's fiscal year for which a payment rate is effective, from July 1 through the following June 30.

Real estate taxes and special assessments. "Real estate taxes and special assessments" means the real estate tax liability shown on the annual property tax statement of the nursing home for the calendar year during which the rate year begins and the actual special assessments and related interest paid during the reporting year. The term does not include personnel costs or fees for late payment.

Related organization. "Related organization" means a person that furnishes goods or services to a nursing home and that is a close relative of a nursing home, an affiliate of a nursing home, a close relative of an affiliate of a nursing home, or an affiliate of a close relative of an affiliate of a nursing home.

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A. An "affiliate" is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

B. A "person" is an individual, a corporation, a partnership, an association, a trust, an unincorporated organization, or a government or political subdivision.

C. A "close relative of an affiliate of a nursing home" is an individual whose relationship by blood, marriage, or adoption to an individual who is an affiliate of a nursing home is no more remote than first cousin.

D. "Control" including the terms "controlling," "controlled by," and "under common control with" is the possession, direct or indirect, of the power to direct or cause the direction of the management, operations, or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Repair. "Repair" means the cost of labor and materials needed to restore an existing capital asset to sound condition after damage or malfunction or to maintain an existing capital asset in a usable condition.

Replacement. "Replacement" means a renovation or substitution of an existing capital asset to improve its function or extend its useful life.

Reporting year. "Reporting year" means the period from October 1 to September 30, immediately preceding the rate year, for which the nursing home submits its cost report, and which is the basis for the determination of the payment rate for the following rate year.

Resident day or actual resident day. "Resident day" or "actual resident day" means a day for which nursing services are rendered and billable, or a day for which a bed is held and billed.

Resident class. "Resident class" means each of the 11 categories established in Section 13.000.

Short length of stay facility. "Short length of stay facility" has the meaning given in Section 20.025.

Standardized resident days. "Standardized resident days" means the sum of the number of resident days in the nursing home in each resident class multiplied by the weight for that resident class.